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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 GLEN CRAIG,

4 Plaintiff,

5 v.

16 Civ. 5439 (JPO)

6 UNIVERSAL MUSIC GROUP, INC.,
7 et al.,

Hearing

8 Defendants.

9 -----x

10 New York, N.Y.
11 May 25, 2018
3:00 p.m.

12 Before:

13 HON. J. PAUL OETKEN,

14 District Judge

15 APPEARANCES

16 LIEBOWITZ LAW FIRM PLLC
Attorney for Plaintiff
17 BY: RICHARD LIEBOWITZ

18 LOEB & LOEB LLP
Attorneys for Defendants
19 BY: BARRY I. SLOTNICK
20 CHENG L. CHEN

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(Case called)

MR. LIEBOWITZ: Richard Liebowitz, Liebowitz Law Firm, counsel for plaintiff, Glen Craig. Good afternoon, your Honor.

THE COURT: Good afternoon.

MR. SLOTNICK: Good afternoon. Barry Slotnick and Lina Chen, Loeb & Loeb.

THE COURT: Good afternoon.

MR. SLOTNICK: Good afternoon.

THE COURT: We're here for a hearing on plaintiff's motion to disqualify defendants' expert witness. I read the parties' submissions regarding this motion and the declarations attached to them, and I determined that it made the most sense to have a hearing. I knew you were in settlement discussions. I thought if there was one way to get this case to settle, it might be scheduling this hearing for a Friday before Memorial Day at 3:00 p.m. Much to my chagrin, that didn't work, but anyway, here we are.

I don't think we need openings or anything. I think we just need to go right to the testimony probably. To the extent that anybody has any housekeeping matters or anything they want to address about how to go forward today, I'm happy to hear it. I assume we'll just have plaintiff first, then defendant, and we can talk about whether you want to do some of it *in camera*.

MR. LIEBOWITZ: Your Honor, yes, I would like, since

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1 there was confidential information exchanged, doing it
2 privately potentially with some of the things that we're going
3 to talk about today.

4 But in terms of the overview in terms of -- I do want
5 to bring up that the parties are relatively close in terms of
6 settlement number. We were waiting for defendant to come back
7 with a response to our demand, and it's relatively very, very
8 close. So we are just waiting for defendant to get back to us.

9 But now, going right to this, plaintiff, Glen Craig,
10 had a discussion with Mr. Sedlik without counsel on the phone,
11 and he thought that this was a confidential discussion. A lot
12 of things did come out regarding evaluation in terms of
13 strength and weaknesses of the case and a lot of information
14 that Mr. Sedlik could use for the expert report and testimony
15 at trial. And it was a reasonable expectation that Mr. Sedlik
16 was going to help plaintiff with the matter, him being an
17 expert in this particular field, and at length had a long
18 conversation without me on the phone and, obviously, numerous
19 things happened on that phone call, and he expected that to be
20 confidential. So we do feel that numerous items in the expert
21 report were discussed with the plaintiff in this action before
22 the report was created and thought that that was used for the
23 actual report.

24 In addition to the report, obviously, there's
25 testimony at trial that we don't know what can be used that was

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1 said during the conversations that Mr. Craig thought was
2 confidential.

3 MR. SLOTNICK: Your Honor, if I may, I thought we were
4 foregoing the opening statements. If Mr. Liebowitz would like
5 to take the stand, we'll cross-examine him, but since he
6 clearly has no knowledge of those conversations between his
7 client and Mr. Sedlik, I think we should get on with it.

8 A couple of things, though. Your Honor has obviously
9 seen the rather extensive briefing on this, the declarations,
10 the exhibits, rather extensive exhibits attached, and we
11 thought it might be better for housekeeping purposes, rather
12 than to go through the painstaking step of introducing each
13 document into evidence, to just deem that the declarations and
14 their exhibits to be deemed into evidence and refer to those as
15 part of the record.

16 THE COURT: That's fine with me. Is that OK with you?

17 MR. LIEBOWITZ: That's fine.

18 THE COURT: So ordered.

19 Do you want to start with your witness, Mr. Liebowitz?
20 You have the burden.

21 MR. LIEBOWITZ: OK. Yes. All right. Just
22 procedurally, I mean, should he stay here?

23 THE COURT: Yes, you can call Mr. Craig.

24 MR. LIEBOWITZ: OK.

25 THE COURT: And then he'll come up to the witness

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1 stand and be sworn in.

2 MR. LIEBOWITZ: OK. All right. Mr. Craig, I'm going
3 to call you to the stand over here.

4 THE COURT: Sir, if you'd please come up to the
5 witness stand; remain standing at the top step. You can come
6 up to the top step and raise your right hand, and you'll be
7 sworn in.

8 GLEN CRAIG,

9 the plaintiff, called as a witness, in his own behalf,
10 having been duly sworn, testified as follows:

11 THE COURT: Do you have additional exhibits?

12 MR. LIEBOWITZ: No, just --

13 THE COURT: Question from the podium, please.

14 MR. LIEBOWITZ: Question from here?

15 THE COURT: Yes. You may inquire.

16 DIRECT EXAMINATION

17 BY MR. LIEBOWITZ:

18 Q. So, Mr. Craig, when did you first know of Mr. Sedlik?

19 A. I was introduced to Jeff Sedlik by Tom Kennedy from the
20 Association of Magazine Photographers. He gave me his
21 information, told me to call him, that he would be helpful for
22 me in this particular case.

23 Q. And when, approximately, did you first speak with
24 Mr. Sedlik?

25 A. Date-wise?

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Craig - Direct

1 Q. Yes, approximate.

2 A. That, I don't know.

3 Q. So the first conversation you had with Mr. Sedlik, was it
4 over the phone?

5 A. Yes.

6 Q. Could you please discuss what happened on that phone call.

7 A. OK. Turns out we're both photographers, so we talked a
8 little bit shop to begin with, OK. I went and then
9 explained -- he asked me some questions, and I proceeded to
10 answer, OK, which photographs are we talking about? I
11 described what they were and then who was the people that we
12 were going against, and I mentioned Universal Music, etc., etc.
13 Then we talked about me and my career, and so forth. And I
14 explained I am not a stock photographer. I don't license
15 photographs, per se. I work with a gallery, Morrison Hotel
16 Gallery, here in New York, and they handle my fine art prints
17 around the world between their three galleries plus two
18 galleries within Europe and one in Japan.

19 So I'm not in the habit of licensing. When somebody
20 comes to me for work, I review that particular situation. If I
21 want to work with those people, I don't want to work with those
22 people, etc., but I'm not in the stock trade. I've never done
23 it thus far, up until a couple times now.

24 OK. So what we -- once we've established those three
25 pictures, I asked: OK. These are these three photographs, OK.

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Craig - Direct

1 Now let's take a look, and what is your opinion of these
2 photographs? And I was told that these photographs are
3 historic, archival --

4 MR. SLOTNICK: Objection. Hearsay.

5 THE WITNESS: -- and --

6 THE COURT: Hold on. Hold on. I'm going to overrule
7 the objection on the ground that it's not for the truth of the
8 matter in this circumstance.

9 Go ahead.

10 A. OK. So then we went into each photograph, OK. And once
11 those three photographs were established that they were part of
12 this lawsuit, OK, trying to put an initial value on these
13 pictures that were supposedly historic and archival. So maybe
14 bad example was used of Getty Images of what they would charge
15 for a historic image to be sold, and I was given a number of
16 about 12,500 to about 15,000 based on three to five years
17 worldwide usage.

18 Q. OK.

19 MR. SLOTNICK: Objection, your Honor. If
20 Mr. Liebowitz wants to have his client conduct this as a
21 monologue, I suppose that's fine, but the comments that
22 Mr. Craig are making do not seem to put words into anybody's
23 mouth. They seem to be a recitation of what he thinks the
24 value of these photographs are. He hasn't yet said anything
25 that he specifically said to Mr. Sedlik or what Mr. Sedlik's

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1 response is, and this doesn't seem to be moving the ball
2 forward at all.

3 THE COURT: Well, I will clarify with the witness that
4 you should answer the question, which is what was said during
5 the first call.

6 THE WITNESS: Yes.

7 THE COURT: Maybe you could clarify whether that is
8 what you're reciting --

9 THE WITNESS: Uh-huh, yes.

10 THE COURT: -- to the best of your recollection.

11 THE WITNESS: Yes. OK.

12 So then I proceeded after that to go into other
13 details, and those details were other things of violations of
14 my work from non-Universal, OK, such as the T-shirts,
15 independent CDs, DVD, other placements, magazines, and so forth
16 and so on, which are now being handled apart.

17 OK. So at that point we were talking back and forth.
18 I said: What do you think these things are? And he explained
19 to me at that point, he said: I think they're iconic, I think
20 they're of historic value, and they're definitely worth a
21 premium.

22 THE COURT: Worth what?

23 THE WITNESS: A premium. OK.

24 Then he said: You know, on your other matters, I am a
25 photographer. I necessarily don't use lawyers, per se. I do

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1 my own collecting of money, and so forth. So I can show you
2 how to do that or I can along the way help you do that --
3 obviously, I guess, for a fee -- and if not, then can refer you
4 to a different attorney.

5 Then in the conversation, he said to me: You know,
6 I'm not too crazy about talking with your current attorney,
7 Richard Liebowitz. And he has filed -- and this was back in
8 January period -- something like 100-plus cases, and so forth.

9 OK. So I said: Oh, fine. And he said: Well, you
10 know, I just was using this other particular attorney that I
11 work with on another case, the stem cell case, he said, and I
12 introduced my -- what they would call the Sedlik rule, slide
13 rule, that became, I guess, case law at that point in district
14 in Maryland, OK. Now, normally something like this could be
15 three times, five times the price per photograph, but in some
16 cases, it could be nine times based on using the slide rule.

17 THE COURT: OK. This is getting way too detailed.
18 You've got ten minutes.

19 MR. LIEBOWITZ: OK. Sure.

20 Q. Mr. Craig, could you talk about specifically the valuation
21 that you discussed with Mr. Sedlik --

22 A. Yes.

23 Q. -- in terms of what you said to Mr. Sedlik in terms of the
24 valuation of what you felt the photographs were valued at.

25 A. Yes. I said to him: Based on what you're saying to me and

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1 based on looking at the Getty site, OK, those numbers of
2 12,500 to 15,000 seem like they are in the ballpark, of course,
3 not applying any kind of in the courtroom or anything, applying
4 anything like, you know, a slide rule to these numbers.

5 Q. OK. Was there anything else in terms of looking at the
6 Getty website? What else did you have in discussions on this
7 confidential information regarding what you thought the value
8 of your photographs were?

9 A. Yes. I was asking for an opinion, OK, based on somebody
10 who is in the field, does licensing on a regular basis, which I
11 don't, for a lead to get an idea of the pricing. I also then
12 discussed the other cases, Getty and all the other things that
13 were on the horizon to be filed, OK.

14 So I took the advice from him and was introduced by
15 email to a gentlemen down in Maryland, Jan something, OK. And
16 he came up to New York, and we met at the Yale Club. And I
17 seemed a little startled because he knew a background of me,
18 you know, and my cases, and so forth, and I'm meeting this guy
19 for the first time as a stranger.

20 MR. SLOTNICK: Objection, your Honor. I'm not sure
21 what this has to do with confidential information shared with
22 Mr. Sedlik.

23 MR. LIEBOWITZ: He's going to continue and discuss
24 information that was obviously --

25 MR. SLOTNICK: I understand he can continue, but these

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1 nonquestions are provoking responses that have nothing to do
2 with why we're here today.

3 THE COURT: Were you answering the question about
4 confidential information?

5 THE WITNESS: Yes, yes.

6 THE COURT: OK. You can continue.

7 A. So this particular attorney explained to me what he does,
8 and so forth, and he explained to me that he had worked with
9 Mr. Sedlik on some cases, and so forth. And what he introduced
10 to me was, he said: Based on what I know and what you're
11 discussing with me --

12 MR. SLOTNICK: Your Honor, objection, your Honor.
13 Hearsay. Not for the truth.

14 THE COURT: Why are you talking about what another
15 attorney told you?

16 MR. LIEBOWITZ: Well, I think this is describing what
17 Sedlik was speaking to this attorney on, and he was startled to
18 hear what this attorney knew about the case and valuation.

19 MR. SLOTNICK: Your Honor, then it's double hearsay.
20 I mean, he's commenting about something that somebody told him
21 that was told by somebody else.

22 THE COURT: What was it that Mr. Sedlik said to you in
23 the phone call that you're talking about?

24 THE WITNESS: You're talking about of this particular
25 attorney?

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1 THE COURT: No, I'm talking about the phone call you
2 had with Mr. Sedlik.

3 THE WITNESS: Well, the idea of the worth; my
4 licensing history, as it was; my thing as a photographer; what
5 I've done in my career, and so forth; and then going into all
6 the other infringements, and so forth and so on, with -- you
7 know, in detail of mentioning the Getty, you know, one by one,
8 and so forth. They were numerous to be dealt with afterwards.

9 BY MR. LIEBOWITZ:

10 Q. Great. Did you have reason to suspect that this
11 information you shared with Mr. Sedlik would be kept
12 confidential?

13 A. Yes, because as I was recommended to him by Tom Kennedy, as
14 supposedly a friend of the photographic community and a fellow
15 photographer, I thought that it would be an opportunity and a
16 chance, you know, to bring him on board for this case. And I
17 was a little shocked afterwards, six months later, that all of
18 a sudden there's an expert witness report that was generated by
19 UMG. So I'm questioning here, number one, who hired him and
20 who had knowledge that he was being hired? As I was told,
21 Barry Slotnick had no idea that this guy was being hired as an
22 expert witness.

23 MR. SLOTNICK: Objection, your Honor. First of all, I
24 don't know who, your Honor --

25 THE COURT: Sustained. Next question.

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Craig - Direct

1 Q. I want to go specifically in terms of valuation and
2 discussion you had with Mr. Sedlik on the Getty Images pricing
3 which is displayed in Mr. Sedlik's report.

4 Did you have a discussion on the Getty Images pricing
5 when you had a discussion with him over the phone?

6 A. Yes. And I was a little shocked when I did see the report
7 afterwards that a common photograph of BB King was pulled to
8 use as a poor example of what licensing would be worth.

9 THE COURT: The question --

10 MR. SLOTNICK: Objection.

11 THE COURT: Sustained. The answer is nonresponsive.

12 Repeat the question.

13 Q. OK. Mr. Craig, I just want to discuss, was the Getty
14 Images pricing that Mr. Sedlik had in his expert report, was
15 that discussed with you in your conversation?

16 A. Yes, that's where a number of 12,500 to 15 was suggested.

17 THE COURT: OK.

18 Q. As a starting point?

19 THE COURT: Who first raised that number? Who put out
20 that number first?

21 THE WITNESS: I was not aware of pricing because I'm
22 not used to doing something like that. This was something that
23 was mentioned in terms of --

24 THE COURT: Who mentioned it?

25 THE WITNESS: Mr. Sedlik, in terms of it being

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Craig - Direct

1 considered a historic premium photograph. Then I went back
2 after the phone call, I looked it up myself just to see --

3 THE COURT: OK.

4 THE WITNESS: -- what the numbers were.

5 THE COURT: Fine. We're just focused on the
6 conversation.

7 BY MR. LIEBOWITZ:

8 Q. Yes, yes, we're just focused on the conversation.

9 Were you surprised to see in the report that what you
10 discussed in the conversation, that this was used in the report
11 because you were discussing about this valuation from the Getty
12 Images website?

13 A. Yes, I was.

14 Q. Did you expect that to be confidential about discussing
15 that you would use pricing from the Getty Images website to
16 support your theory of damages?

17 MR. SLOTNICK: Objection, your Honor.

18 A. Yes.

19 MR. SLOTNICK: Certainly lacking specificity. He's
20 talking about a report. The report's not in evidence. He
21 hasn't asked a specific question regarding the report. I have
22 no way of cross-examining this witness because I have no way of
23 understanding what this witness is saying.

24 THE COURT: I'm going to allow it as it is. I mean,
25 he just said, were you surprised to see the Getty pricing in

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Craig - Direct

1 the report?

2 MR. LIEBOWITZ: Yes.

3 Q. So were you surprised to see the Getty Images pricing that
4 you were discussing with Mr. Sedlik on the phone and what you
5 were discussing ended up being in the report?

6 A. Yes, I was. And I was very shocked to see a completely
7 different photograph, not even my photograph, being used, which
8 was a common photograph, as a bad example as pricing, really
9 low pricing, for an image that meant nothing. It just was
10 common. And then in the report it goes on to say that the
11 photographs were just common photographs of BB King like of
12 anybody's, etc., etc. Now, if that was the case, why did
13 Universal use the images on 44 CDs worldwide?

14 MR. SLOTNICK: Objection, your Honor. Nonresponsive.

15 THE COURT: I'll allow it.

16 Next question.

17 MR. LIEBOWITZ: OK.

18 Q. Did you discuss with Mr. Sedlik the strengths and
19 weaknesses of your case?

20 A. Yes.

21 Q. OK. Could you explain that, what you discussed.

22 A. Well, I had no guidelines in terms of pricing, OK, for that
23 or anything in the future, and I was looking to him as a leader
24 in the field in terms of an expert, in terms of giving me a
25 hand or giving us a hand in terms of coming up with some

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Craig - Direct

1 pricing of what things were worth.

2 Q. Did you yourself throw out numbers in terms of valuation
3 for him to get feedback on the valuation?

4 A. I kind of let him lead.

5 Q. OK.

6 A. Because, again, I'm not an expert in that.

7 Q. All this was under the expectation that this was
8 confidential; that he was on your team?

9 A. Yes.

10 Q. Was there any other confidential information that was
11 discussed on the phone call with Mr. Sedlik?

12 A. The other cases mentioned which did not appear in my
13 declaration or affidavit that I did, OK. Nowhere did it appear
14 in the Getty filings, or anywhere else, any of that stuff
15 mentioned.

16 Q. Anything else in terms of valuation of your photographs
17 that were discussed besides the Getty Images pricing?

18 A. Just the fact of the formulas of slide rule and the offer
19 to show how to use the slide rule, and so forth, and that these
20 photographs could be used at that point, not the standard three
21 or five times multiplier.

22 Q. OK. Did you have any other discussions with Mr. Sedlik?

23 THE COURT: It's Mr. Sedlik, right?

24 MR. SLOTNICK: Yes.

25 THE COURT: Mr. Sedlik.

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Craig - Cross

1 MR. LIEBOWITZ: Sedlik.

2 A. Just the factors, and we went into the thing of the other
3 attorney, of introducing us together. And like I said, I'll
4 repeat again, I just was a little taken back when I met him of
5 his already knowledge about me and what was going on.

6 Q. And did you have another phone call conversation with
7 counsel on the line with Mr. Sedlik?

8 A. Yes, there was a phone call afterwards jointly.

9 Q. And do you recall what was said on that phone call?

10 A. I think most of what was said in that case was the attorney
11 asking questions, you know, more and me just listening.

12 Q. OK. Was valuation discussed on that phone call as well?

13 A. I believe so.

14 MR. LIEBOWITZ: I have no further questions. Thank
15 you, your Honor.

16 THE COURT: Thank you.

17 Would you like to do cross-examination?

18 MR. SLOTNICK: Yes, your Honor.

19 CROSS-EXAMINATION

20 BY MR. SLOTNICK:

21 Q. Good afternoon, Mr. Craig.

22 A. Uh-huh.

23 Q. You talk about this conversation you had alone with
24 Mr. Sedlik. Do you recall how long that call was?

25 A. About 45 minutes to an hour.

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Craig - Cross

1 Q. You said you talked shop. What does that mean to somebody
2 who is not a photographer?

3 A. OK. He explained to me his background, what he shot, and
4 so forth; mentioned that he actually had done some posters
5 through a company of his; and he had shot an actual BB King CD
6 cover, things like that.

7 Q. What did you tell him about your career?

8 A. Oh, I explained to him my background in the music business
9 first, then photography as well, parallel.

10 Q. And your background in the music business goes back to
11 19-when?

12 A. 1966.

13 Q. And you took him through every step between 1966 in the
14 music business to the time you were in the photography
15 profession?

16 A. No.

17 Q. OK.

18 A. Photography, let's get this clear, was always a side thing,
19 as well as the music.

20 Q. OK.

21 A. Uh-huh.

22 Q. And you walked through how your career developed?

23 A. Just quick, brief summary.

24 Q. OK.

25 A. Not step by step, year by year, no.

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Craig - Cross

1 Q. What did you tell him about your career in the music
2 business?

3 A. Who I worked for, you know.

4 Q. Who was?

5 A. Sid Bernstein.

6 Q. Who's Sid Bernstein?

7 A. Sid Bernstein is the gentleman who passed away two years
8 ago. Sid Bernstein was a premier world promoter. This is the
9 gentleman that brought the Beatles, The Rolling Stones, The
10 Who, etc., etc., to America, and was part of their
11 representation here in the states as well as promoting their
12 concerts.

13 Q. And you mentioned this to --

14 A. Yeah.

15 Q. -- Mr. Sedlik?

16 A. I mean, Sid was the gentleman who did the Beatles' concert
17 at Shea Stadium.

18 Q. Mr. Craig, I look around the room, and I suspect you and I
19 are the only ones who were alive when the Beatles were at Shea
20 Stadium. So I'm asking for the record. So thank you.

21 A. Uh-huh.

22 Q. You talk about who the defendants were, is that correct?

23 A. Yes.

24 Q. And you mentioned UMG?

25 A. Yes.

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Craig - Cross

1 Q. Did you also mention the BB King estate?

2 A. Yes.

3 Q. And did Mr. Sedlik tell you that he had a business
4 relationship with the --

5 A. It was mentioned he had licensed some photographs to them.

6 Q. Did he mention any reluctance about being an expert adverse
7 to the estate?

8 A. At that point, he was more not wanting to talk to the
9 counsel, my counsel, because of his so-called reputation.

10 Q. OK. We can get to that in a moment, but my question was
11 did he say anything to you about his reluctance to bring -- to
12 be an expert adverse to the BB King estate?

13 A. What was mentioned to me that I can recall was he was
14 reluctant to have a conversation with Mr. Liebowitz or be
15 associated with Mr. Liebowitz based, so-called, on his
16 reputation as an ambulance chaser.

17 Q. OK. Again, I promise you we will get to that, but you're
18 not answering my question.

19 Did he, at the time that he spoke to you, tell you
20 about his relationship, his business relationship, with the BB
21 King estate and his reluctance to be an expert adverse to the
22 BB King estate?

23 A. It was mentioned to me that he had a working or past
24 relationship, that he had licensed photographs to these people,
25 and then pointed out which CD it was, and so forth. And I just

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Craig - Cross

1 so happened to have photographs within that particular CD.

2 Q. So you have no other recollection of the conversation
3 regarding the BB King estate and Mr. Sedlik's reluctance to be
4 a witness adverse to them?

5 A. What I remember was the reluctance to want to talk to
6 Richard Liebowitz.

7 Q. OK. Can you go into detail. What did he say? How long
8 did you talk about that?

9 A. A few minutes. And then he proceeded to send me
10 for-your-eye's-only email that had something like hundred-plus
11 cases that Richard Liebowitz filed since January.

12 Q. Did you ask for that?

13 A. No.

14 Q. Did you tell him not to send it?

15 A. No, I just got it.

16 Q. OK. So there was no discussion about that during your
17 call, to your recollection?

18 A. About that I was going to get an email?

19 Q. Yes.

20 A. No.

21 Q. You talked about Getty Images. How does that factor into
22 this, please?

23 MR. LIEBOWITZ: Objection. Form. What do you mean?

24 A. How it factored into this?

25 Q. Yes.

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Craig - Cross

1 THE COURT: Overruled.

2 You can answer.

3 A. I was not the person who brought that up, nor did I bring
4 that up in this report that you furnished to the Court.

5 Q. So you're saying that references to Getty Images was
6 brought up by Mr. Sedlik?

7 A. Yes.

8 Q. In what context?

9 A. In terms of the photographs themselves being considered
10 iconic, historic value. And I later went onto the Getty site
11 myself and punched in some stuff and saw some friends, Jim
12 Marshall, other people's work, and so what they were asking for
13 a historic archival premium photograph.

14 Q. So that information was available to you online on the
15 Getty Images website?

16 A. Yes, I looked afterwards.

17 Q. Other than Getty pricing, what else did you discuss about
18 valuation?

19 A. What was discussed was a starting point of what a historic
20 premium photograph would be worth, OK. Normally, let's say in
21 a court, was the norm of three to five. And then what was
22 discussed was the idea based on the introduction of case law of
23 the -- in the stem cell case that he handled and was an expert
24 witness for, and using that, the math for that slide rule, OK,
25 of what a value could be worth of a photograph.

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Craig - Cross

1 Q. What do you mean by "that slide rule"?

2 A. It's something that Mr. Sedlik came up with in that
3 particular stem cell case that he worked with this attorney Jan
4 that was introduced to me, and it became case law. At that
5 point the judge accepted it, and it's kind of the norm to be
6 able to use that in a trial.

7 Q. And that's what you read about after the fact, this stem
8 case?

9 A. Yes.

10 Q. OK.

11 A. Yeah.

12 Q. And you've had a chance to read that case?

13 A. Yes.

14 Q. And that case was provided to you by Mr. Sedlik or was that
15 provided to you by counsel or just public record?

16 A. No, I was curious afterwards, and I got on it and I read
17 the whole thing up and down. I saw PBN News, things like that,
18 just to see what was going on with the case.

19 Q. You talked about your second conversation with Mr. Sedlik,
20 which was with counsel, is that correct?

21 A. Correct.

22 Q. And you said that you listened mostly; that Mr. Liebowitz
23 did much of the talking, is that correct?

24 A. Correct, uh-huh.

25 Q. And you said that you were interested in getting

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Craig - Cross

1 information about pricing because that's not something that
2 you've done historically in your career?

3 A. Correct.

4 Q. So that you had no ability to contribute to that
5 conversation regarding pricing?

6 MR. LIEBOWITZ: Objection.

7 A. No.

8 Q. Now, you talk about other cases. What cases are those?

9 A. What other cases are those as follows: OK. There are nine
10 independent CDs that do not belong to Universal Music; one DVD
11 issued by EuroArts; five independent T-shirts, not counting the
12 T-shirt that you did in conjunction with the estate, UMG, that
13 was sold on the BBKing.com site, OK. We have the Getty Images.
14 We have cases against the Granger Collection, Warner Bros.,
15 Sony Music, Vice, BuzzFeed, AOL, *Huffington Post*. There's a
16 couple hundred cases.

17 Q. When you say "cases," are you referring to actually filed
18 lawsuits?

19 A. Coming.

20 Q. OK. So they're not actually filed as of this date?

21 A. One of them is.

22 Q. That's the one against Getty Images?

23 A. Yes.

24 Q. OK. And you recounted these facts to Mr. Sedlik?

25 A. Yeah, I mentioned, you know, this is the extent of the

I5PHCraH

Craig - Cross

1 abuse that has gone on, and gone on not in 1970 but recently
2 kind of thing.

3 Q. But none of those cases, as you call them, are part of this
4 case, is that correct?

5 A. Correct.

6 Q. This case is limited to certain photograph records that
7 have been released that you've sued on, is that correct?

8 A. Yes.

9 Q. So the other cases have nothing to do with this case?

10 A. No.

11 Q. Thank you.

12 Mr. Craig, have you ever retained Mr. Sedlik as an
13 expert in this action?

14 A. I was under the impression that we were going to retain
15 him, and as I understood, there was a separate phone call later
16 on between Mr. Liebowitz and Mr. Sedlik in terms of retaining
17 his services, not just in my case, but three or four other
18 cases that were on the horizon or already started, nothing to
19 do with me.

20 Q. So the answer to my question would be no, you have not
21 retained Mr. Sedlik as an expert in this case?

22 A. They talked money back and forth, and they did not come to
23 any kind of an agreement.

24 Q. So the answer to my question is no, you have not?

25 A. Right, after the fact, yes.

I5PHCraH

Craig - Cross

1 Q. Okay. And you've never signed an engagement letter with
2 Mr. Sedlik, have you?

3 A. No, not at that point.

4 Q. OK.

5 A. That was just an initial exploratory phone call.

6 Q. And at any point you've not ever entered into an engagement
7 letter with Mr. Sedlik --

8 A. No.

9 Q. -- is that correct?

10 And to the best of your knowledge, your attorney has
11 not entered into an agreement with Mr. Sedlik as it relates to
12 your case?

13 A. No.

14 Q. OK. Did you enter into a consulting agreement with
15 Mr. Sedlik regarding this case?

16 A. We got to the point after that phone call of Richard
17 Liebowitz talking to him and trying to work out some details
18 possibly in terms of hiring him.

19 Q. So the answer to my question is no, you haven't entered
20 into --

21 A. No.

22 Q. Thank you.

23 And you don't have a signed confidentiality agreement
24 with Mr. Sedlik either, do you?

25 A. No.

I5PHCraH

Craig - Cross

1 Q. OK.

2 A. You know, amongst people you think, you know, there's some
3 kind of ethics.

4 MR. SLOTNICK: I'll ask the Court to strike the last
5 nonresponsive answer.

6 MR. LIEBOWITZ: Objection.

7 Q. And you've never paid Mr. Sedlik in connection with this
8 case, have you?

9 A. No.

10 Q. Outside of this case, have you had -- I think you said
11 that your September 19 call with Mr. Sedlik was the first time
12 you ever spoke to him, is that correct?

13 A. Correct, yes.

14 Q. So you didn't know of him before?

15 A. No.

16 Q. So you had no prior business or personal relationship with
17 him?

18 A. No.

19 Q. And even though you're both photographers, you were not
20 familiar with him, per se?

21 A. The only thing that I knew afterwards was, oh, he was that
22 guy who did the cover with the ring in the front of the
23 picture.

24 Q. OK. So then you have -- you've never entered into any kind
25 of agreement with Mr. Sedlik for any kind of professional

I5PHCraH

Craig - Cross

1 business relationship before, during, or after that

2 September 19 --

3 A. No.

4 Q. -- 2016 call? Thank you.

5 When you called Tom Kennedy -- Tom Kennedy is whom, by
6 the way?

7 A. Tom Kennedy is the president of the Association of Media
8 Photographers. He's their current president.

9 Q. What is the Association of Media Photographers?

10 A. OK. Everybody is -- it's based in Philadelphia. It's all
11 over the United States. It's all photographers, working
12 photographers, advertising, fashion, so forth and so on. They
13 offer member services, discounts towards insurance, legal
14 in-house counsel, and so forth.

15 Q. OK. Sort of like a trade association of photographers?

16 A. Yes, exactly.

17 Q. And you called Mr. Kennedy and you -- do you know
18 Mr. Kennedy personally?

19 A. Yes.

20 Q. And you called and you told him that you were looking for
21 an expert?

22 A. Yes.

23 Q. Did you tell him you were looking for a damages expert?

24 A. I explained to him a little bit. Just, look, we entered
25 into a lawsuit, Tom. OK. I need to put some value on these

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Craig - Cross

1 photographs, OK. I don't know. That's not my cup of tea in
2 terms of licensing. Who can you recommend that has a good
3 track record?

4 Q. OK. Did he recommend anybody other than Mr. Sedlik?

5 A. He recommended a gentleman in Long Island, I don't remember
6 his name, an older gentleman that was part of the chapter but
7 really had no history of this type of thing. He knew about
8 stock photographs, that's about it.

9 Q. Did you contact that gentleman?

10 A. Yes, I did.

11 Q. You recall his name?

12 A. No.

13 Q. Do you know --

14 A. An older gentleman in Long Island that Tom recommended, and
15 he was kind of senile almost.

16 Q. As I age, I get very sensitive to what people consider an
17 older gentleman, so I won't ask you how old he was.

18 Did you know if Mr. Liebowitz spoke to this other
19 gentleman?

20 A. No.

21 Q. So you never turned that information over to --

22 A. No, I just mentioned to him that I spoke to this older guy,
23 and he just does some stock, and that was it. And, you know,
24 he would be of no help.

25 Q. In addition to this older, somewhat senile gentleman,

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Craig - Cross

1 Mr. Kennedy gave you the name and contact information for
2 Mr. Sedlik?

3 A. Correct.

4 Q. And you chose to call him?

5 A. Yes.

6 Q. And before you contacted Mr. Kennedy, did you and
7 Mr. Liebowitz discuss needing an expert in this case?

8 A. Yes.

9 Q. Was it your task to find somebody for Mr. Liebowitz to try
10 to hire?

11 A. We both started a mission looking.

12 Q. Was it your understanding that after you obtained the name
13 of an expert, you were going to pass that along to
14 Mr. Liebowitz so he could have conversations with that expert?

15 A. Yes.

16 Q. And did you do so?

17 A. Yes.

18 Q. Do you recall how quickly after you received the
19 information you contacted Mr. Liebowitz?

20 A. When I got off the phone.

21 Q. But then you also contacted Mr. Sedlik directly, isn't that
22 correct?

23 A. Yes.

24 Q. You didn't wait for Mr. Liebowitz to call?

25 A. Right.

I5PHCraH

Craig - Cross

1 Q. Because you wanted to talk to Mr. Sedlik personally?

2 A. Yeah, I wanted -- was very curious to find some pricing,
3 and so forth.

4 Q. And you didn't want to do that with Mr. Liebowitz on the
5 phone?

6 A. No, I was, go ahead and call the guy up.

7 Q. Wasn't it a fact that the reason you wanted to talk to
8 Mr. Sedlik alone is because you wanted to talk to Mr. Sedlik
9 about your concerns about Mr. Liebowitz?

10 MR. LIEBOWITZ: Objection.

11 A. Not necessarily, no. I was interested in the pricing.

12 Q. And you had no interest whatsoever in asking him about your
13 attorney?

14 A. The only thing I had mentioned was to him that he's new,
15 OK, experience-wise, and so forth.

16 Q. So you did mention that to Mr. Sedlik?

17 A. Uh-huh.

18 Q. How did that come up?

19 A. Just in the -- in the conversation.

20 Q. You raised it?

21 A. Yeah.

22 Q. About how long was that discussion about Mr. Liebowitz?
23 Five minutes? Ten minutes? Fifteen minutes?

24 A. No, quickly. A minute maybe.

25 Q. Then there was another minute where he talked to you about

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Craig - Cross

1 Mr. Berlage?

2 A. Yes.

3 Q. And then there was another minute when he talked to you
4 about all Mr. Liebowitz's cases?

5 MR. LIEBOWITZ: Objection.

6 A. Yeah, probably. Minute, two, whatever.

7 Q. You weren't watching your --

8 A. No.

9 Q. -- watch at the time?

10 A. No.

11 Q. So it could have been a minute and a half?

12 A. Right, whatever.

13 Q. Could have been three minutes?

14 A. Uh-huh.

15 THE COURT: Please try to answer yes or no if you can
16 rather than --

17 A. Yes.

18 THE COURT: -- rather than the noises.

19 Q. So you spoke to Mr. Sedlik on September 20, is that
20 correct?

21 A. I guess that was the date.

22 Q. I'm sorry. It was September 19. Does that sound right
23 now?

24 A. I know it was the fall. What date, what hour, no.

25 Q. OK. You didn't take any notes of your conversation?

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Craig - Cross

1 A. No.

2 Q. And you didn't send an email to Mr. Liebowitz identifying
3 what happened on the call?

4 A. Verbally.

5 Q. So there's no email?

6 A. Right.

7 Q. OK. Now, Mr. Sedlik sent you some material almost
8 immediately, did he not?

9 A. Yes.

10 Q. Like to show you what's been marked as Sedlik Declaration
11 Exhibit 2.

12 THE COURT: Was this previously filed?

13 MR. SLOTNICK: Yes, your Honor. This was part of
14 Mr. Sedlik's declaration. It's docket No. 63-4.

15 Your Honor, may I approach?

16 THE COURT: Yes.

17 Q. Mr. Craig, I'd like you to look at what was the Sedlik
18 Declaration Exhibit 2. This was filed with the Court on
19 December 22, 2017, and it's from Jeff Sedlik to
20 glencraig@rcn.com.

21 Is that your email address?

22 A. Yes, it is.

23 Q. It's dated Tuesday, September 20, at 2016 at 4:15 p.m. Do
24 you see?

25 A. Uh-huh.

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Craig - Cross

1 Q. Do you recall seeing this?

2 A. This is the email that was an attachment of all the court
3 records.

4 Q. That's correct. So you do recall seeing it?

5 A. Yes.

6 Q. And you recall that, you go down beyond the court records,
7 you'll see in the second block of print, says: "Also, I can't
8 take on matters involving the BB King estate. I have a
9 licensing arrangement with them."

10 So you saw that on September 16, 2016, did you not?

11 THE COURT: September 20.

12 MR. SLOTNICK: Sorry. September 20, 2016. Thank you,
13 your Honor.

14 A. Uh-huh, so it was part of the email.

15 Q. So you saw that, is that correct?

16 A. I focused on the list of the cases, to be honest with you.

17 Q. Why did you focus on the list of the cases? Wasn't that
18 irrelevant to you?

19 A. No, I just was curious.

20 Q. OK. Well, why?

21 A. When someone comes with that kind of accusation that
22 there's -- you know, discrediting somebody, oh, there's so many
23 cases filed, etc., etc., you're not curious to go into them and
24 look at them?

25 Q. I don't know if that's an accusation or a praise for

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Craig - Cross

1 somebody that successful.

2 But you did see in the email, whether you focused on
3 it or not, Mr. Sedlik said to you I can't take on matters
4 involving BB King estate? You saw that, correct?

5 A. You're showing me that it was in the email.

6 Q. Well, you received the email and it's in the email. Did
7 you see it?

8 A. Can I be honest with you? No.

9 Q. OK.

10 A. I saw the part of --

11 Q. That you wanted to see?

12 A. -- of the cases, yes.

13 Q. Did you pass this along to Mr. Liebowitz?

14 A. Yes.

15 Q. OK. So presumably he saw that too or didn't, because he
16 wasn't interested either. You don't know; you have no idea?

17 MR. LIEBOWITZ: Objection.

18 A. I don't speak for him.

19 Q. OK. That's good. All right.

20 You have no idea what anybody representing you or you
21 thought about a statement that seems pretty clear-cut. Reading
22 it now, do you understand what it means?

23 A. After the fact, yes.

24 Q. Well, reading it now, yes, so you understand what it means,
25 I can't take matters involving the BB King estate. OK. You

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Craig - Cross

1 acknowledge that right now, correct?

2 A. I'm seeing it now, yes.

3 Q. All right. Did you ask Mr. Sedlik for a CV?

4 A. A what?

5 Q. A CV, a résumé.

6 A. No.

7 Q. You didn't ask him for a résumé?

8 A. No.

9 Q. You were thinking of hiring him as an expert, and you
10 didn't want to know what his background was?

11 A. Briefly we talked about, you know, what he did, you know,
12 in the past, you know, with organizations, and so forth. But,
13 no, I would leave that to the person who would be hiring him,
14 the attorney.

15 Q. But you received a copy of Mr. Sedlik's CV, résumé,
16 correct?

17 A. No.

18 Q. You never received that?

19 A. No.

20 MR. SLOTNICK: Excuse me, your Honor. Sorry, your
21 Honor. I'm sorry, your Honor.

22 THE COURT: That's all right.

23 MR. SLOTNICK: Your Honor, I'm introducing Sedlik
24 Declaration Exhibit 1-1.

25 Q. Mr. Craig, I want you to look at this document. If you

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Craig - Cross

1 look at the second page, it's page 2 of 10, it's document 63-1.
2 It was filed with this Court on December 22, 2017, and it's an
3 email from Jeff Sedlik to glencraig@rcn.com. It says,
4 "Subject: Emailing Professor Jeffrey Sedlik CV," and it's
5 dated Monday, September 19, 2016, at 2:29 p.m.

6 Do you see that?

7 A. Yes.

8 Q. Do you see the résumé behind it, the CV?

9 A. Yes.

10 Q. Do you recall seeing that at the time that it was received
11 by you?

12 A. No.

13 Q. Do you recall whether you sent it on to Mr. Liebowitz?

14 A. Don't think so, no.

15 Q. OK. Do you recall ever sending it on to Mr. Liebowitz?

16 A. What's that?

17 Q. Do you recall ever sending it to Mr. Liebowitz?

18 A. No.

19 THE COURT: Are you about done, Mr. Slotnick?

20 MR. SLOTNICK: Your Honor, honestly --

21 THE COURT: I'd like to get to your witness.

22 MR. SLOTNICK: Your Honor, I can go past this.

23 THE COURT: Do you have a significant point you wanted
24 to make?

25 MR. SLOTNICK: The point I want to make is that from

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Craig - Cross

1 day one, Mr. Sedlik made it very clear that he could not
2 represented the plaintiff because of this conflict.

3 THE COURT: I think that's proven by that exhibit,
4 Sedlik Declaration Exhibit 2.

5 MR. SLOTNICK: Your Honor, OK.

6 THE COURT: Whether he paid attention to it or not, I
7 think that probably does establish that it wouldn't be
8 reasonable to assume otherwise.

9 MR. SLOTNICK: Thank you, your Honor. Beyond that,
10 your Honor, I think that there was never an agreement in place.
11 There was never a payment in place. There was never an
12 agreement as to the terms. And what this witness has testified
13 to is that, essentially, he was a passive party to any
14 conversation that he had with Mr. Sedlik. So to the extent
15 that he gave any kind of confidential information, he gave
16 information regarding his career, he gave information regarding
17 the infringement, all of which is in the complaint.

18 He gave information regarding totally irrelevant
19 matters to this case, although I'm sure they're very important
20 to Mr. Craig. And at the very least there should have been no
21 reasonable expectation of confidentiality or a relationship or
22 an agreement. Frankly, your Honor, we can put Mr. Sedlik on
23 the stand, but I'm not sure what the point is. It's the
24 plaintiff's burden to establish a confidential relationship,
25 and forgive me, but I just don't see it.

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Craig - Redirect

1 THE COURT: Mr. Liebowitz.

2 MR. LIEBOWITZ: I mean, I would like the opportunity
3 to, obviously, cross-examine Mr. Sedlik, but if he's not going
4 to come on the stand, then I could ask a few questions.

5 THE COURT: Do you want to do more redirect?

6 MR. LIEBOWITZ: Yeah, just maybe a couple minutes.

7 THE COURT: OK.

8 MR. LIEBOWITZ: OK.

9 THE COURT: We'll do brief redirect.

10 MR. LIEBOWITZ: OK.

11 REDIRECT EXAMINATION

12 BY MR. LIEBOWITZ:

13 Q. Mr. Craig, Mr. Slotnick mentioned passive and that you
14 didn't mention anything in terms of valuation. That's not
15 correct, correct?

16 A. That's not correct.

17 MR. SLOTNICK: Objection.

18 THE COURT: Sustained. No leading questions.

19 MR. LIEBOWITZ: Yes, OK. OK.

20 Q. So what did you say in response to Mr. Sedlik when you were
21 discussing valuation? You didn't just sit there and hear what
22 he had to say. You had some response. What did you say to
23 him?

24 MR. SLOTNICK: Objection. Mischaracterizes his own
25 witness' testimony that he sat there and listened.

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Craig - Redirect

1 THE COURT: Sustained.

2 Just ask the question part.

3 MR. LIEBOWITZ: Yes.

4 Q. So what did you say in response to when Mr. Sedlik was
5 describing his thoughts on valuation?

6 MR. SLOTNICK: Objection.

7 THE COURT: Overruled.

8 You can answer.

9 A. I was first a little curious because of not having the
10 history of licensing at all, coming from somebody of his
11 stature, and then the fact of the introducing the slide rule,
12 things like that, which I had never heard of before.

13 Q. OK. Did you say anything else?

14 A. I think I may have asked how did you base these things, you
15 know, and so forth, you know, how.

16 Q. Were actually specifically numbers floated by you and him
17 in terms of valuation of the damages?

18 A. I asked what he thought in his esteemed value of what
19 something could be worth.

20 Q. OK. Based off of what?

21 A. Based on his knowledge, number one; number two, his case
22 that was used in the stem cell, you know, using the multiplier
23 in that case as applied to here; and then I believe it was
24 offered to both myself and to you of how to do the multiplier,
25 how to use it in the future on this case and other cases.

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Craig - Redirect

1 Q. But what did you specifically say?

2 MR. SLOTNICK: Objection. Asked and answered.

3 THE COURT: I'll allow it. If you remember what you
4 specifically said, you can answer.

5 A. I don't.

6 MR. LIEBOWITZ: OK. I have no further questions.

7 THE COURT: OK.

8 MR. LIEBOWITZ: Thank you.

9 MR. SLOTNICK: Your Honor.

10 THE COURT: You may step down. Thank you.

11 (Witness excused)

12 THE COURT: Yes, Mr. Slotnick.

13 MR. SLOTNICK: We move for a determination on denying
14 plaintiff's motion. They haven't established a confidential
15 relationship, an expectation, or reasonable expectation, or
16 that any confidential information was imparted from Mr. Craig
17 to Mr. Sedlik.

18 THE COURT: Mr. Liebowitz, would you like to respond?

19 MR. LIEBOWITZ: Yeah, I would like to respond.

20 Your Honor, Mr. Craig being on the telephone with
21 Mr. Sedlik did express confidential information in terms of
22 valuation, and there was an expectation of this -- that
23 Mr. Sedlik was on Mr. Craig's team and that there were going to
24 be follow-up phone calls.

25 THE COURT: What confidential information was given?

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Craig - Redirect

1 The references to, obviously, all the stuff about career and
2 background, that's not confidential. Anything that he could
3 look up afterwards, including stuff he found online that day,
4 is not confidential by definition. And stuff that refers to
5 some measure of damages from another case that's already
6 publicly been aired or happened, that's not confidential.

7 So what was actually communicated that was
8 confidential?

9 MR. LIEBOWITZ: So in terms of the analysis, going on
10 the Getty website and determining and looking at those prices,
11 and that was what was used in the report. So when they were
12 discussing about the Getty prices.

13 THE COURT: The fact that it was later used in a
14 report doesn't mean it was confidential.

15 MR. LIEBOWITZ: Well, the idea of going onto the Getty
16 Images website and establishing from there the valuation is
17 something that Mr. Craig discussed and obviously knew about it,
18 and then that was used in the report. And that was, in terms
19 of the analysis and looking at that -- pretty much the range of
20 those prices were discussed, and that was used explicitly in
21 his report. So that was discussed on that phone call and it
22 was used and that was Mr. Craig's testimony that he was shocked
23 to see, when they were discussing about the pricing about the
24 Getty Images website, that was used.

25 THE COURT: Right. But if I have a conversation with

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Craig - Redirect

1 someone and I said, well, this is the method of cost-benefit
2 analysis that I use --

3 MR. LIEBOWITZ: Yeah.

4 THE COURT: -- and you can find it in *World Book*
5 *Encyclopedia* and this is how I've already done it and then
6 these cases have done it, and then six months later it shows up
7 in that expert's report, it doesn't mean it was confidential
8 when it was first discussed. It's just a measure.

9 MR. LIEBOWITZ: Expectation of what he was going to
10 use as well in terms of valuation of damages.

11 THE COURT: OK.

12 MR. LIEBOWITZ: But to go back and have a conversation
13 with Mr. Sedlik and then for Mr. Sedlik then to be retained by
14 the defendants, there were so many different experts that they
15 could have retained and not one that had conversations with
16 Mr. Craig, you know, that should be brought out in the first
17 instinct.

18 THE COURT: That's just a question of --

19 MR. LIEBOWITZ: Yeah.

20 THE COURT: -- something that was annoying to you, but
21 I don't think that that's the standard. Whether someone has a
22 reasonable expectation of confidentiality is the limiting
23 factor here. It's not the fact that you're annoyed with
24 someone's litigation tactics. You don't get anything unless it
25 rises to the level of there was a breach of confidentiality

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Craig - Redirect

1 requiring disqualification, which is a high standard.

2 MR. LIEBOWITZ: Yeah, I agree with that. I understand
3 that it is a high standard. But on those phone calls, he did
4 believe that there was this expectation that what was discussed
5 was confidential and that they would obviously continue the
6 discussions. We don't know what's obviously going to be used
7 at trial, you know, that is not in the report. So we leave
8 that open to a possibility as well that there could be some
9 information that's not in this report that could be used.

10 THE COURT: Mr. Slotnick.

11 MR. SLOTNICK: Your Honor, I can make a representation
12 that at trial nothing beyond what's in Mr. Sedlik's report will
13 be used. I think, again, Mr. Craig has had now three
14 opportunities, two declarations and now live, sworn testimony,
15 and while he mouths the words, there's no meaning behind them.

16 At the end of the day, he had a conversation with
17 somebody. He let that person do most of the talking or he
18 talked about his career, which I'm sure is interesting but, as
19 you say, not confidential. That the only discussion that the
20 witness can recall is a Getty pricing sheet, which is available
21 from Getty and others. There's nothing that Mr. Craig said
22 that isn't in the complaint, isn't in the discovery that we've
23 taken, isn't in his deposition, isn't in his other lawsuit that
24 he brought against Getty. So they can keep saying the words to
25 check the boxes, but that box is flat. There's nothing in

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Craig - Redirect

1 there.

2 Your Honor, this has been an extraordinary hardship
3 for our clients. Yes, Universal is a big company. The BB King
4 estate is -- it's the estate of a jazz musician. He was
5 successful, but it's not Bruno Mars. And at the end of the
6 day, they have to bear the cost of this. They have to bear
7 cost of bringing Mr. Sedlik here for nothing. I mean, it
8 really is outrageous. We can put him on the stand and he can
9 talk, but what's there left for him to say other than either I
10 didn't say any of those things and he didn't tell me anything?
11 And it's their burden.

12 THE COURT: Well, I agree it is their burden, and I do
13 think that they've failed to meet the burden. It is a high
14 burden, and I don't think it's necessary for Mr. Sedlik to
15 testify. Honestly, based on the submissions and the
16 declarations, I thought I was going to get more down in the
17 weeds on confidential information. I have not really heard
18 what I think is confidential information.

19 But even before you get to that, as you all know, the
20 either two- or three-part test that this circuit and this
21 district has typically applied for disqualification, which we
22 all agree is a high bar, is, first, the existence of the
23 reasonable expectation of a confidential relationship between
24 the movant and the expert; second, whether the movant, in fact,
25 disclosed confidential information to the expert; and then,

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Craig - Redirect

1 third, some courts also consider whether the public has an
2 interest in allowing or not allowing the expert to testify.
3 I'm not going to cite the cases, but those are in the parties'
4 briefs.

5 I think, really, the first issue, even on the first
6 point, there's a failure to establish the burden of proof by
7 plaintiff because I don't think there was any reasonable
8 expectation of a confidential relationship between Mr. Craig
9 and/or his counsel, on the one hand, and Mr. Sedlik, on the
10 other. The first reason, of course, is that there was no
11 signed agreement. There were preliminary talks maybe of money,
12 but nothing ever agreed to.

13 But even before you get to that, the one thing I
14 hadn't focused on, frankly, from the papers was on
15 September 20, he clearly said in the email, I can't take on
16 matters involving the BB King estate. So that clearly provided
17 a situation where maybe he was hoping for some other kind of
18 work but clearly was not going to be retained for this matter.

19 I do think it was a situation where, whether or not
20 Mr. Craig expected it to be confidential, and he may well have
21 and people do, I don't think it was reasonable to expect that
22 there was a confidential relationship formed at that point. So
23 based on that, I'm going to deny the motion to disqualify based
24 on all the evidence that I've admitted and the evidence in the
25 form of testimony I've heard today.

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Craig - Redirect

1 All right. Anything else?

2 MR. SLOTNICK: Nothing. Thank you.

3 MR. LIEBOWITZ: Nothing. Thank you.

4 THE COURT: Have a good holiday weekend. Sorry for
5 hurting your holiday weekend.

6 Thank you very much. We're adjourned.

7 (Adjourned)

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